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A Summary of Topical Highlights from decisions of the U.S. District Court for the District of Oregon
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Employment

A former employee who signs an employment application that includes a "terminable at will" clause may not then maintain claims for breach of an employment contract based upon alleged internal policies and procedures. The employer not only included the terminable at-will language in its applications, but also included similar disclaimers in its employee handbook and manual. The handbook further provided that its terms could not be orally modified. Based upon the employer's written materials, Judge Jelderks granted a defense motion for summary judgment against plaintiff's contract claims.

Plaintiff also asserted a state age discrimination claim and conceded that it was barred by the statute of limitations. Plaintiff nevertheless argued that the limitations bar was unconstitutional since it failed to provide for an exception for those who cannot file on time due to a mental condition. Judge Jelderks denied plaintiff's challenge to the limitations period finding that a plaintiff's mental condition was irrelevant under applicable Oregon law.

The court also rejected plaintiff's claims of negligent management, finding that no special relationship existed based upon plaintiff's employment status.

A former supervisor was accused of defamation and intentional infliction of emotional distress. Judge Jelderks held that the supervisor's comments to other employees regarding the reasons for plaintiff's discharge fell within the employer's qualified privilege. To the extent that other employees repeated the comments to others, their actions were not within the course and scope of their employment for the purpose of establishing the employer's liability. Plaintiff's claim of "compelled self-publication," i.e. that he would have to tell future potential employers the defamatory basis for his discharge, the court found plaintiff failed to produce any evidence to substantiate this claim and further, noted that the evidence revealed that plaintiff had successfully secured new employment and that the defendant had advised that the plaintiff resigned.

Plaintiff's intentional infliction of emotional distress claim was premised upon the timing and manner of his termination; plaintiff's supervisor met him at the airport just prior to plaintiff's departure, with his family, for a vacation. Further, the supervisor demanded the immediate turnover of a company laptop computer. The court noted that the circumstances were "less than ideal," but not so egregious to sustain the claim. Araujo v. General Electric Information Services, CV 98-667-JE (Opinion, Feb. 4, 2000).

Plaintiff's Counsel: Brian Dobie
Defense Counsel:
Richard VanCleave

7 A unsuccessful probationary police officer survived a summary judgment motion in an action alleging race and age discrimination. Judge Janice Stewart adopted the 7th Circuit's approach in accepting the plaintiff's affidavit stating that he subjectively believes his work

performance is adequate as sufficient to establish the satisfactory job performance element of a prima facie case. Although the City proffered substantial non-discriminatory reasons for not hiring plaintiff, plaintiff proffered evidence that other, younger, non-black, probationary officers completed the training program. Fleming v. City of Portland, 2000 WL 116073, CV 99-326-ST (D. Or. Jan. 5, 2000).

Plaintiff's Counsel:
Michael Bottoms
Defense Counsel: Linda Meng

7 A former employee filed an action against his former employer alleging that the defendant caused him to be embarrassed and stigmatized by his fellow employees when the defendant disclosed his AIDS/HIV status to his fellow workers. Judge Ann Aiken held that an employee who voluntarily notified his employer of his AIDS/HIV status may not then maintain an action for negligent infliction of emotional distress or "public disclosure of private facts," since the employer had no duty of confidentiality. Judge Aiken rejected the plaintiff's arguments that such a claim could be premised upon the "special" employee/employer relationship. The court also rejected an argument that such a duty could be implied under the ADA. The court noted that employers must keep employee medical program examinations confidential under the ADA, but Judge Aiken specifically declined to read the statute as broadly as the plaintiff urged. Vawser v. Fred Meyer, Inc., CV 99-1208-AA (Opinion, Feb. 2000 - 8 p).
Plaintiff's Counsel:
Daniel Snyder
Defense Counsel:
David Riewald

Environment

Environmental interests filed an action against the Department of the Interior asserting that the Secretary violated the 16 U.S.C. § 1533(b)(6)(A) of the Endangered Species Act (ESA) by failing to publish final regulations for 1 butterfly and five plant species within 1 year of publishing proposed regulations. After the complaint was filed, defendant issued regulations for all of the species at issue. Judge Janice Stewart denied a defense motion to dismiss based upon standing. The court held that standing need only exist at a case's inception and that plaintiffs' affidavits satisfied that standard. The court reasoned that the real issue was mootness and found that plaintiffs' requests for injunctive and declaratory relief were moot. Klamath Siskiyou Wildlands Center v. Babbitt, 99 CV 1044-ST (Opinion, Feb. 15, 2000- 13 pages).

Plaintiffs' Counsel:
Marianne Dugan
Defense Counsel:
Tom Lee (Local)

Social Security

Judge Robert E. Jones was affirmed by the Ninth Circuit in a case establishing an abuse of discretion standard of review for a district court that remands, rather than reverses, an ALJ's benefit determination. After determining the applicable test, the court specifically affirmed Judge Jones' determination that remand, rather than reversal was appropriate. Although the ALJ had inappropriately discredited the opinion of plaintiff's treating physician, there was no vocational expert testimony directed to the issue of whether the doctor's limitations would render the claimant unable to work. Harman v. Apfel, No. 98-35780, slip op. 1915 (Feb. 17, 2000).

Copies: To obtain electronic copies of referenced district court cases, e-mail requests to: kelly_zusman@ord.uscourts.gov